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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2006

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.88 of 2006

The Commissioner of Income Tax ,
Chennai. ..Appellant/Respondent

Vs

M/s.Soundararaja Finance Ltd.,
19, Kasturi Rangan Road,
Alwarpet, Chennai-18. ..Respondent/Appellant

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras, 'B' Bench in I.T.A. Nos.1724/Mds/97 for the assessment year 1992-93.

For Appellant : Mrs.Pushya Sitaraman

JUDGMENT

(Judgment of the Court was delivered by P.P.S.Janarthana Raja, J.)

The present appeals are filed under Section 260A of the Income Tax Act, 1961 by the Revenue, in I.T.A. No.1724/Mds/97, passed by the Income Tax Appellate Tribunal, Madras, 'B' Bench raising the following substantial question of law.

> "Whether in the facts and circumstances of the case, the Tribunal was right in holding that the two Electrical Yarn Cleaners by the assessee is entitled for depreciation at the rate of 100%?"

2. The facts leading to the above question of law are as under:

i) The assessee is a Hire Purchase and Lease Finance Company. The Assessment Year is 1992-93 and the corresponding Accounting Year ended on 31.03.1992. The assessee company filed its Return of income

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on 31.12.1992, declaring total income of Rs.5,21,180/-. The Return was processed under Section 143(1)(a) on 08.12.1993. Later, the case was taken up for scrutiny on 06.12.1993. During the year, the assessee company purchased two Electrical Yarn Cleaners in January 1992 and February 1992 and claimed 100% depreciation on those assets valued at Rs.13,61,704/-. According to the Assessing Officer, as these assets were acquired in 1992 and used for less than 180 days, the assessee is entitled for the depreciation of 50% only.

ii) Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) dismissed the case of the appellant and confirmed the order of the Assessing Officer. Aggrieved by the same, the assessee filed an appeal to the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal allowed the appeal and given a direction to the Assessing Officer to allow the full depreciation in the year under consideration.

3. We heard the arguments of the learned standing counsel for the Revenue, who submitted that if the asset is used for less than 180 days, the third proviso to Section 32(1) would operate. Here the issue is related to the question that if the individual worth of the asset is less than Rs.5,000/-, whether restriction as contemplated in the relevant proviso to Section 32 in regard to the 50% allowability would apply in the facts of the case. The relevant proviso of Section 32 reads as under:

> "Provided further that where an asset referred to in clause (i) or clause (ii) or clause (iia), as the case may be, is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than one hundred and eighty days in that previous year, the deduction under this sub-section in respect of such asset shall be restricted to fifty per cent of the amount calculated at the percentage precribed for an asset under clause (i) or clause (ii) or clause (iia), as the case may be:"

It is pertinent to refer to C.B.D.T. Circular No.591 dated 30.01.1991 reported in 188 ITR 1 at Page No.6 (Statute). The relevant portion are reproduced as under:

> "It is clarified that where the actual cost of any machinery or plant does not exceed five thousand rupees, the actual cost thereof shall be allowed as a deduction without any restriction, in respect of the previous year in which the machinery or

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plant is first put to use by the company for the purpose of its business or profession"

It is to be noted that the first proviso to Section 32 was omitted by the Finance Act, 1995 with effect from 01.04.1996. Prior to the omission, the first proviso as inserted by the Finance Act, 1996 with effect from 01.04.1966 and amended by the Finance Act, 1983 with effect from 01.04.1984, read as under:

> "Provided that where the actual cost of any machinery or plant does not exceed five thousand rupees, the actual cost thereof shall be allowed as a deduction in respect of the previous year in which such machinery or plant is first put to use by the assessee for the purposes of its business or profession."

100% depreciation on the actual cost of items of machinery or plant, the cost of which not exceeded Rs.5,000/- was available to the assessee by virtue of that proviso. The restriction put on the basis of user was not made applicable to the items of this category. This issue is clarified by the C.B.D.T. Circular referred above. The Supreme Court in the case of UCO Bank Vs. Commissioner of Income Tax, reported in 237 ITR 889, held that the circulars are binding on the department and it is not open to the department to raise a contention which is contrary to the circulars and instructions validly issued by the Board. The Revenue authorities were therefore not correct in restricting the depreciation to the extent of 50%.

4. In view of the foregoing conclusions, we find no error in the order of the Income Tax Appellate Tribunal and requires no interference. Hence no substantial question of law arises for consideration of this Court. Accordingly, the above tax case is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.THE ASST. REGISTRAR
INCOME TAX-APPELLATE TRIBUNAL
MADRAS 'B' BENCH
BESANT NAGAR III FLOOR,CHENNAI 600 090.

2. THE SECRETARY
CENTRAL BOARD OF COMMERCIAL TAXES
NEW DELHI.

3. THE COMMISSIONER OF INCOME
TAX (APPEALS)-IV CHENNAI.

4. THE COMMISSIONER OF INCOME
TAX,CHENNAI.

5. THE DEPUTY COMMISSIONER
OF INCOME TAX SPECIAL RANGE XI, CHENNAI.

+1cc to Mrs. Pushya Sitaraman, Senior Standing Counsel Income Tax Department Sr 5113

MS (CO)
km/20.2.

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